

May 13, 2011

NOTICE OF RULE DEVELOPMENT

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-601.226

RULE TITLE: Youthful Offender Program Participation

PURPOSE AND EFFECT: The purpose and effect of the proposed rulemaking is to define “successful completion” of the youthful offender program for the purpose of a Departmental recommendation for sentence modification, to set forth the process by which a modification is recommended, and to generally clarify the youthful offender program protocol.

SUBJECT AREA TO BE ADDRESSED: Youthful Offender Program

RULEMAKING AUTHORITY: 944.09, 958.04, 958.11 FS

LAW IMPLEMENTED: 944.09, 958.04, 958.11, 958.12 FS

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY. THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Kendra Lee Jowers, 501 South Calhoun Street, Tallahassee, Florida 32399-2500.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

33-601.226 Youthful Offender Program Participation.

- (1) Each institution that houses youthful offenders ~~offender~~ shall provide a programmatically diversified extended day of 16 hours of required inmate participation six days a week, contingent upon available resources.
- (2) The schedule of events shall be developed by each warden and approved by the regional director and the Office of Institutions.
- (3) Definitions ~~Successful participation in all phases of the youthful offender extended day program and successful completion of the offender management plan and reclassification to minimum or community custody will result in an evaluation by the ICT to determine the inmate’s eligibility for a recommendation to the court for a modification of sentence at any time prior to the scheduled expiration of sentence as provided in Section~~

958.04(2)(d), F.S. ~~Requests for sentence modification will not be made before successful completion of the extended day program.~~

(a) Bureau of Admission and Release – the bureau in the central office responsible for overseeing and auditing all the processes involved with sentencing documents received from the courts and for controlling inmates' prison commitment, coordinating release processes, and administering the department's re-entry initiatives ~~After the youthful offender has successfully participated in the youthful offender program and completed the IMP as developed, a complete evaluation of the case shall be initiated. The evaluations shall include a review and summary of the following areas:~~

- ~~1. Disciplinary record;~~
- ~~2. Gain time earned, forfeited or withheld and reasons for the action taken;~~
- ~~3. Academic and vocational accomplishments;~~
- ~~4. Work assignments which would assist the youthful offender in obtaining future employment;~~
- ~~5. Counseling programs;~~
- ~~6. Substance abuse programs;~~
- ~~7. Other programs and objectives specifically recommended for the youthful offender; and~~
- ~~8. Release placement plan prepared by probation and parole office staff which will include proposed residence, employment, family ties or support systems, financial resources, other resources available to the inmate and any recommendation for continued treatment;~~
- ~~9. Nature of offense and length of sentence.~~

(b) Bureau of Classification and Central Records – the bureau in the central office responsible for the overall classification system in the department, including reception, facility, work, program, and custody assignments, disciplinary processes, population management, and maintaining active and inactive inmate records ~~The evaluation of the youthful offender's eligibility for a recommendation for a modification of sentence shall be coordinated by the institutional classification staff and incorporated into a complete progress report. The completed progress report shall be reviewed and, once approved, signed by the ICT and a representative of the SCO.~~

(c) Extended Day Program — a 16-hour per day, multi-phase program at designated youthful offender institutions designed to reduce inmate idleness and improve a youthful offender's chance of successful re-entry into the community ~~Prior to making a recommendation for sentence modification, the inmate's classification officer shall~~

~~send a Victim Input Statement, Form DC1 701B, to the victim(s) or the victims' family for comments regarding the release of the inmate. Form DC1 701B is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, Research, Planning and Support Services, 2601 Blair Stone Road, Tallahassee, Florida 32399 2500. The effective date of this form is 2 19 03.~~

~~(d) Institutional Classification Team (ICT) – the team consisting of the warden or assistant warden, classification supervisor, chief of security, and other members as necessary when appointed by the warden or designated by rule. The ICT is responsible for making work, program, housing, and inmate status decisions at a facility and for making other recommendations to the state classification office Once the inmate has been approved by the ICT and the SCO for a recommendation for sentence modification, a request for initiation of a Youthful Offender's Release Placement Plan, Form DC6 121, shall be made to the community corrections office in the county where the inmate plans to reside. The community corrections office in the county where the inmate plans to reside shall complete the placement release plan and return it to the requesting institution. Form DC6 121 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, Office of Research, Planning and Support Services, 2601 Blair Stone Road, Tallahassee, Florida 32399 2500. The effective date of this form is 2 19 03.~~

~~(e) Review Board – the team consisting of extended day program staff, to include at least one officer of the rank of sergeant or above and a staff member directly involved in the training and instruction of youthful offenders, responsible for determining advancement through the phases of extended day program The sentence modification package shall include at a minimum the following:~~

- ~~1. The completed release placement plan that has been verified by community corrections field staff;~~
- ~~2. The completed victim input statement forms;~~
- ~~3. A progress report with justification for sentence modification;~~
- ~~4. An order of modification of sentence placing defendant on probation prepared by the classification officer for the judge's signature;~~

~~5. A completed Defendant's Waiver of Rights to Modify Sentence and Place Defendant on Probation, Form DC3 235. Form DC3 235 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, Office of Research, Planning and Support Services, 2601 Blair Stone Road, Tallahassee, Florida 32399 2500. The effective date of this form is 2 19 03.~~

~~(f) State Classification Office (SCO) – the office or office staff at the central office level that is responsible for the review of inmate classification decisions. Duties include approving, disapproving, or modifying institutional classification team recommendations. The completed sentence modification package shall be forwarded to the Bureau of Classification and Central Records for review by the central office screening committee.~~

~~(g) The central office screening committee shall review the sentence modification request for completeness and shall make a written recommendation to the Deputy Director of the Office of Institutions (classification) to approve or disapprove the request.~~

~~1. If the Deputy Director concurs with the recommendation for sentence modification, the Chief of the Bureau of Classification shall transmit a written request to the sentencing judge to consider modifying the inmate's sentence.~~

~~2. If the Deputy Director does not concur with the recommendation for sentence modification, the Chief of Classification will notify the ICT at the facility where the inmate is housed. The ICT will notify the inmate of the decision.~~

~~(h) One or more of the following will render the inmate ineligible for consideration of a sentence modification to the court:~~

- ~~1. Conviction for murder, attempted murder, or an offense resulting in a death;~~
- ~~2. Conviction for sexual battery pursuant to Section 794.011, F.S.;~~
- ~~3. Conviction for kidnapping pursuant to Section 787.01, F.S.;~~
- ~~4. Conviction for carjacking pursuant to Section 812.133, F.S.;~~
- ~~5. Conviction for domestic violence pursuant to Section 741.28, F.S.;~~
- ~~6. Conviction for home invasion robbery pursuant to Section 812.135, F.S.;~~
- ~~7. Sentenced as a habitual offender pursuant to Section 775.084, F.S.; or~~
- ~~8. Currently serving mandatory portion of a sentence pursuant to Section 775.082, F.S.~~

~~(i) If the recommendation is approved by the sentencing judge, the community corrections office shall send the certified court order to the Bureau of Sentence Structure and Population Management for the inmate to be released through the department's release procedures.~~

~~(j) If the judge disapproves the modification request, the community corrections office that handled the modification request shall notify the chief of the Bureau of Classification and Central Records and the ICT. The ICT~~

shall notify the inmate.

(4) Extended Day Program Phases. Phases are consecutive. An inmate must complete Phase I before advancement to Phase II and Phase II before advancement to Phase III.

(a) Phase I:

1. Phase I shall consist of a two-week orientation period, including a broad, extensive training program including physical fitness, work assignments, regimented application of discipline, and personal development programs.

2. To advance to Phase II, the inmate must pass an evaluation on orientation materials.

(b) Phase II shall consist of continued demonstration of skills learned in Phase I, adherence to the structure of the extended day program, and positive consistency and participation in vocational, academic, and betterment programs.

(c) Phase III shall consist of:

1. Continued demonstration of capability in the areas of personal responsibility, job assignments, and academic and vocational programs, as well as all other areas of daily living and activities;

2. Maintenance of high proficiency in achievements;

3. Providing assistance to staff with designated activities; and

4. Evaluation in all areas on a continuous basis to ensure that the inmate should remain in Phase III.

(d) Remedial Phase. The remedial phase is designed for inmates who are not participating in the extended day program such that sentence modification may be achieved and who pose disciplinary and management problems and/or have basic needs for additional behavior modification measures based on poor institutional adjustment or behavior. The remedial phase shall consist of an extensive period of behavior modification emphasizing compliance with rules, proper institutional adjustment, and appropriate social behavior.

(5) Advancement to Phase III

(a) The Bureau of Classification and Central Records or designee will review inmates and determine if they meet the criteria for recommendation for modification of sentence. Review will include consideration of the potential rehabilitative benefits that may be achieved through the inmate's participation in Phase III. No inmate has a right to recommendation for modification of sentence. Institutional classification staff is authorized to notify the Bureau of Classification and Central Records or designee of an inmate who meets the criteria for advancement to Phase III as set

forth in this rule. The sentencing court shall be notified in writing by the Bureau of Classification and Central Records or designee requesting approval for the inmate to participate in the extended day program such that modification of sentence may be achieved. The state attorney shall, at the same time, be notified that the department is seeking such approval from the court.

1. If the sentencing court approves the department's request that the inmate participate in the extended day program such that a potential recommendation for modification of sentence may be achieved per section (6) of this rule, the Bureau of Classification and Central Records or designee will note on the record that the sentencing court has approved this possibility. Institutional classification staff will notify the inmate of the court's response. The 150 day period described in subparagraph (6)(a)1. below commences upon placement.

2. If the sentencing court disapproves of the inmate's participation in the extended day program such that the inmate may achieve modification of sentence, the inmate shall complete incarceration pursuant to the terms of the commitment order. The Bureau of Classification and Central Records or designee will note on the record that the sentencing court has denied the inmate the possibility of sentence modification. Institutional classification staff will notify the inmate of the court's response.

(b) If not previously identified by the department and approved for participation by the sentencing court, a Phase II inmate wishing to participate in Phase III must apply for advancement using Form DC6-188, Inmate Promotional Request, and an evaluation by the ICT will be conducted to determine whether the inmate is eligible for advancement to Phase III. If approved by the ICT for advancement, the Bureau of Classification and Central Records or designee will review the inmate for eligibility for a potential recommendation for modification of sentence under section (6) of this rule. If not deemed eligible, the inmate shall remain in Phase III, subject to the provisions of section (4) of this rule, completing incarceration pursuant to the terms of the commitment order. Form DC6-188 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of this form is \_\_\_\_\_.

(6) Recommendations for Modification of Sentence

(a) The following will result in an evaluation by the Bureau of Classification and Central Records or designee of the inmate's eligibility for recommendation to the court for a modification of sentence at any time prior to the scheduled expiration of sentence as provided in Section 958.04(2)(d), F.S.:

1. Potential for successful participation in all phases of the youthful offender extended day program, to include participation in Phase III of the extended day program for a minimum of 150 days; and

2. Reclassification to minimum or community custody.

(b) Successful participation in the extended day program is defined as:

1. Satisfactory gain time ratings in Phase III for a minimum of 150 days. Those days for which the youthful offender does not participate satisfactorily shall be repeated. Any break in service of these days for reasons not in the inmate's control will be considered when determining days to be repeated.

2. Participation in recommended programs;

3. No disciplinary reports for the previous four months; and

4. No more than four corrective consultations for the previous four months.

(c) Evaluation of the inmate's eligibility will include:

1. Review of circumstances of offense;

2. Institutional adjustment; and

3. Achievements.

(d) One or more of the following will render the inmate ineligible for recommendation of a sentence modification to the court:

1. Conviction for murder, attempted murder, or an offense resulting in a death;

2. Conviction for sexual battery pursuant to Section 794.011, F.S.;

3. Conviction for kidnapping pursuant to Section 787.01, F.S.;

4. Conviction for domestic violence pursuant to Section 741.28, F.S.;

5. Sentenced as a habitual offender pursuant to Section 775.084, F.S.; or

6. Currently serving mandatory portion of a sentence pursuant to Section 775.082, F.S.

(7) Extended Day Program Assessment. Each inmate shall be required to participate in a satisfactory manner for a minimum of 150 days in order to successfully complete the program.

(a) The review board shall continually assess the inmate's participation in the program and recommend status assignments, which may include recommendation to repeat days for which an overall unsatisfactory report was received.

(b) Inmates who have successfully participated for the required time period but who are awaiting release by the

sentencing court or other releasing authority shall remain subject to the rules of the department and the extended day program. Failure to adhere to these rules may be grounds for removal from the program, withdrawal of the department's request to the court for modification of the inmate's sentence, or a request by the department to rescind modification of sentence. Form DC6-193, Order Rescinding Modification of Sentence, will be completed by the Bureau of Classification and Central Records or designee and provided to the court with the request to rescind modification of sentence. This form is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of this form is \_\_\_\_\_.

(8) Removal from Consideration for Recommendation.

(a) An inmate can be removed from the program for health reasons, expiration of sentence, or when such removal is in the best interest of the inmate or the security of the institution and in accordance with section 958.11, F.S.

(b) If removal is for behavioral or disciplinary reasons, the inmate will not be reconsidered for a recommendation for modification of sentence.

(9) Sentence Modification Process

(a) Inmates who have satisfactorily participated in the extended day program will be recommended for sentence modification.

(b) Institutional classification staff shall notify the Bureau of Classification and Central Records or designee of those inmates expected to achieve successful participation and forward a completed Form DC3-235, Defendant's Waiver of Rights in Modification of Sentence, no earlier than 60 days but no later than 45 days prior to the inmate's expected completion of the program.

(c) The Bureau of Classification and Central Records or designee shall either approve the ICT's recommendation, disapprove the recommendation, or refer the matter back to the ICT for additional information.

(d) If approved by the Bureau of Classification and Central Records or designee, a cover letter reporting that the inmate is participating satisfactorily in the program and is expected to complete will be sent to the community corrections intake office within the circuit of the sentencing court by the Bureau of Classification and Central Records or designee within 3 working days from the receipt of an e-mail or telephone call from the facility that the inmate is expected to complete the program.

(e) The community corrections intake office shall complete Form DC3-234, Order Modifying Sentence, and

submit it to the court for approval or disapproval within 5 working days from receipt of the request. Form DC3-234 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of this form is \_\_\_\_\_.

(f) The community corrections intake office shall ensure that Form DC3-234 is received from the sentencing court and shall route the form to the Bureau of Admission and Release.

(g) The appropriate Admission and Release staff and the Bureau of Classification and Central Records or designee will be notified as to the receipt of Form DC3-234.

(h) Upon receipt of the court's written action, the appropriate staff in the Bureau of Admission and Release shall make the necessary sentence structure adjustments and, if applicable, initiate release processes.

(i) If the sentence modification order is not received within 5 working days after the inmate completes the program, the Bureau of Classification and Central Records or designee shall notify by email or by telephone the community corrections intake office which submitted the sentence modification packet to the court. The community corrections intake office staff shall contact the sentencing judge to determine the status of the request for sentence modification. Community corrections intake staff shall notify the Bureau of Classification and Central Records or designee as to the status of the request for sentence modification. If the community corrections intake office staff member obtains the approved DC3-234, the staff member shall forward the DC3-234 to the Bureau of Admission and Release and the processes enumerated in paragraphs (9)(g) through (9)(h) of this rule shall be followed.

(j) If the sentencing court disapproves the sentencing modification, the community corrections intake office shall notify the Bureau of Classification and Central Records or designee. The Bureau of Classification and Central Records or designee will notify the ICT at the institution housing the inmate, and the provisions of paragraph (9)(k) of this rule shall be followed.

(k) If modification of sentence is denied by the sentencing court, the Bureau of Classification and Central Records or designee will approve transfer of the inmate to an appropriate facility. If recommended for work release, the SCO will review and approve transfer as appropriate. The ICT shall notify the inmate of the court's denial.

(10) Nothing in this rule is intended to prohibit an inmate from petitioning the court if the inmate believes he or she has successfully participated in the program on the basis set forth in this rule or on the basis of other facts he or she believes are relevant.

Rulemaking Specific Authority 944.09, 958.04, 958.11 FS. Law Implemented 944.09, 958.04, 958.11, 958.12 FS.

History—New 10-11-95, Amended 9-11-97, Formerly 33-33.013, Amended 3-13-01, Formerly 33-506.106,  
Amended 4-2-02, 2-19-03, 9-16-04,\_\_\_\_\_.